

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TN

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CONSUMER ADVOCATE DIVISION )

v. )

BELLSOUTH TELECOMMUNICATIONS, )  
INC. )

DOCKET NO. 00-00041

SECRETARY

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THE CONSUMER ADVOCATE DIVISION RESPONSES  
TO BELLSOUTH TELECOMMUNICATIONS, INC.'S  
DATA REQUEST OF MARCH 23, 2000

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The Consumer Advocate Division and its counsel assert and invoke their privileges regarding detailed legal basis or theory and work product. The Consumer Advocate Division and counsel objects to any and all discovery propounded by BellSouth which requests the same. Response to the valid part of associated discovery does not waive and is not intended to waive the assertion of any privilege.

1. Does the CAD contend that the late payment charge in BellSouth's proposed tariff is a charge or rate for telecommunications service(s)? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. The proposed tariff adds to the existing charge for service for particular customer of BellSouth and other carriers and is excessive and unreasonable, since the company is already being compensated for the late payments in its rates and contracts. The label used by BellSouth to describe compensation is of no consequence. For example, BellSouth would not be able to escape regulation by simply labeling its compensation for local basic exchange services as the "charge" for basic service, instead of the "rate" for basic service. Similarly, BellSouth could not escape the effect of Tenn. Code Ann. § 65-5-208(a)(a) by changing the label of the service.

BellSouth is a public utility operating under title 65. It can only receive compensation for providing service. There is no authority for the telecommunications utility to provide any thing else unless the service is exemption in by state or federal law. Tenn. Code Ann. § 65-4-101 (c).

When a public utility seeks to compensate itself and its shareholders for the “arguable” recurring and non-recurring cost of serving a customer who has not paid the bill on time, it is a rate or charge for telecommunications service (s). These costs include all recurring and nonrecurring costs associated with or arising out of the regulatory contract to provide services, they include but are not limited to, the working capital effects on the company associated with the provision of service. The rate or charge associated with late payments is simply a subcategory of the cost of providing service, which is similar to the cost of maintaining facilities or repairing facilities or billing. In fact, a structured late charge payment is nothing more than a modified billing mechanism for service provided to a customer. The basis of and for the company’s compensation arises out of the contract with the customer.

The contract is the same bundled regulatory contract which existed on June 5, 1995, June 6, 1995 or December 1, 1998. The contract with the customer for local basic exchange services and non basic services was ratified and offered by the legislature and accepted by BellSouth when it applied for price regulation. BellSouth waived other alternatives when it objected to the TPSC’s or the TRA’s setting of its initial rates. The legislative regulative contract did not provide for a separate additional late payment charge. BellSouth seeks to change that legislative contract to provide additional compensation for the provision of the service. See, also Black’s Law Dictionary, 5th edition which provides that a charge is the price of, or rate for, something. In connection with public utilities, a rate is a charge to the public for a service open to all upon the same terms.

The late payment consideration and compensation is also part of the contract between BellSouth and its non-basic service customers on June 6, 1995 and December 1, 1998. BellSouth may change that non-basic contract, however, only so long as it maintains the aggregate revenue cap provided in Tenn. Code Ann. § 65-5-209. See also Tenn. Code Ann. § 65-5-208 (a)(1).

When the company institutes a rate or charge associated with the cost of the provision of service by other companies it goes beyond simply billing for a customer. It is mandating and imposing a unilateral new contract and relationship which the customer has not accepted. A valid contract between BellSouth and the customer for additional charges must show an offer, acceptance and consideration. BellSouth’s late payment charge, when it bills for other companies shows neither. BellSouth classifies late payments as payment for service. Furthermore, the charges associated with the provision of service by other

companies are subject to the just and reasonable test, including but not limited to an earnings investigation, which would test the charge by a non-price regulation plan company. If BellSouth takes on the attributes of a non-price regulated company, by separate and independent contract, it becomes subject to the same extent of review or even renounces its price cap status. The company can not have it both ways. BellSouth also computes the late payment charge as a percentage of service price.

The Consumer Advocate Division objects to this request to the extent it requires disclosure of work product.

2. Does the CAD contend that the late payment charge in BellSouth's proposed tariff is a charge or a rate for basic local exchange telephone service(s)? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. See, number 1 above. In addition, BellSouth already has these facts and documents in its possession and the Consumer Advocate Division objects that BellSouth's request is unduly burdensome.

3. Please admit that customers who pay their bills by the due date will not be affected by the late payment charge in BellSouth's proposed tariff.

Response: The Consumer Advocate Division admits that customers who pay by the due date will not be double charged or pay an increased rate for service. However, we note that customers who pay their bills early are not given a 3% discount, while BellSouth gives its preferred business customers discounts. If BellSouth is entitled to additional charges above and beyond those existing for the beginning period of plan approval, early paying customers are providing BellSouth with additional compensation that BellSouth is using to reduce the rate charged for a service that it considers more competitive. If there is a late payment charge there should be a reciprocal discount for early payers. The Division denies the request to admit if intended for any other purpose.

4. If you do not admit Request No. 3, please explain in detail how customers who pay their bills by the due date will be affected by the late payment charge in BellSouth's proposed tariff, identify all facts supporting your response, and produce all documents supporting your response.

Response: N/A.

5. Does the CAD contend that the late payment charge in BellSouth's proposed tariff is a charge or rate for non-basic service(s)? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. See answer to number 1 above.

6. Please admit that BellSouth's monthly rate for residential Flat Rate Main Station Service in Rate Group 5 is \$12.15.

Response: Admitted to the extent that the request to admit is intended to mean the bundle of things, services and charges encompassed by the service which BellSouth has named in its tariff "Residential Flat Rate Main Station Service in Rate Group 5" is \$12.15. Denied if the request to admit is not intended to encompass the response as admitted.

7. The Complaint filed by the CAD alleges that "the late charge proposed in the tariff is more than just and reasonable. . . ." See Complaint ¶ 18. Please explain in detail the factual and legal basis for your contention, identify all facts supporting this contention, and produce all documents supporting this contention.

Response: The compensation deemed reasonable for late payments was deemed reasonable at the time initial rates were set. BellSouth waived, is guilty of laches, objected to, refused and declined to have individual rates set.

When the Tennessee Public Service Commission set the rates that eventually became the rate deemed just, reasonable, and affordable as BellSouth's initial rates under price regulation, the cost of the working capital needed due to customers' delays in payment were included as a cost of service. In addition to the required working capital, the Commission included any collection costs BellSouth forecast to be incurred. The charge is not the lowest possible charge and there is no evidence that any other money should be attributed to existing compensation and BellSouth's rate of return on equity exceeds 30% which makes the charge unnecessary. In addition, the charge makes service less affordable for some Tennessee consumers.

8. The Complaint filed by the CAD alleges that "the late charge proposed in the tariff is more than just and reasonable. . . ." See Complaint ¶ 18. Please specify the amount that the CAD alleges is a "just and reasonable" late charge, explain in detail the factual and

legal basis for your response, identify all facts supporting your response, and produce all documents supporting your response.

Response: The Consumer Advocate Division submits that the associated compensation in the amount deemed just, reasonable and affordable when the price regulation plan is effectuated as just and reasonable and affordable by operation of law. See also the responses to other discovery propounded in this request by BellSouth for more detailed responses. Those responses are incorporated herein by reference. The Consumer Advocate Division may also update this answer upon complete discovery.

9. Please admit that to the best of your knowledge, nearly 100% of BellSouth's customers can pay local basic exchange service.

Response: Denied or unable to admit or deny. The U.S. Census Bureau County estimates for poverty indicates that a substantial number of consumers may have few resources to apply to service. The number of person in poverty is substantially less than 100%. The timeliness of payment, however, may be impacted by their individual circumstances.

10. Does the CAD contend that BellSouth's proposed tariff has the effect of "providing or withholding a benefit?" See Complaint at ¶ 15. If so, please specify each and every benefit the CAD contends the tariff effectively provides or withholds, explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. BellSouth gives discounts, rebates or refunds to some business customers but not others. In addition, the revenues associated with the proposed tariff are by BellSouth's own admission being attributed to benefit some business customers. Other customers are not benefitting by the charge.

11. Does the CAD contend that BellSouth's proposed tariff would result in BellSouth's "render[ing], or pay[ing], for a service for one customer but not another?" See Complaint at ¶ 16. If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. See response to No. 10 above.

12. Does the CAD contend that any legal authority (including but not limited to statutes, rules, regulations, and case law) prohibits the Tennessee Regulatory Authority from approving BellSouth's proposed late payment tariff? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. Tenn. Code Ann. § 65-5-208; 65-5-209; 65-4-123; See also other responses and objections to this discovery which are incorporated herein by reference.

13. Please admit that BellSouth incurs costs when its customers do not pay their bills by the due date.

Response: Denied. The Consumer Advocate Division admits, however, that BellSouth's customers incur cost for the provision of service including the costs associated with billing and collection. The cost of billing and collection, including the cost of working capital that was required because of the lag between the date service is provided and the date revenues are collected, were included when the rates that became BellSouth's initial rates under price regulation were approved. The lag in payment was computed on the basis of actual experience of BellSouth that reflected the payment patterns of customers, and the collections costs were those budgeted by BellSouth. As a result, BellSouth is currently being compensated for those costs through rates being charged BellSouth's customers who incur the cost overall. In addition, cost incurred by BellSouth in relation to service provided by other entities is BellSouth's voluntary choice.

14. Does the CAD contend that BellSouth does not incur costs when its customers do not pay their bills by the due date? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. The mere fact that BellSouth bills or does not receive payment or does not receive payment by the due date does not necessarily result in BellSouth incurring cost. Regulation insured in the past and continues to ensure that BellSouth's customers incur cost for the provision of service including the costs associated with billing and collection through service rates charged and paid. The cost of billing and collection, including the cost of working capital required because of the lag between the date service is provided and the date revenues are collected, were included when the rates that became BellSouth's initial rates under price regulation were approved. The lag in payment was computed on the basis of actual experience of BellSouth that reflected the payment patterns of customers, and the collections costs were those budgeted by BellSouth. As a result, BellSouth is currently being compensated for those costs through rates being charged BellSouth's customers who incur the cost.

15. Please admit that BellSouth incurs costs when its customers do not pay for services that BellSouth bills on behalf of others through its telephone bill (i.e., toll charges for IXCs) by the due date.

Response: Denied.

16. Does the CAD contend that BellSouth does not incur costs when its customers do not pay for services that BellSouth bills on behalf of others through its telephone bill (i.e., toll charges for IXCs) by the due date? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. Incurred costs arise from the operation of law, not through voluntary contract. See related responses above.

17. The Complaint filed by the CAD alleges that BellSouth's proposed tariff "makes service price differences with respect to local basic exchange services and other services under its tariff." See Complaint at ¶ 30. Please identify each and every alleged service price difference, explain in detail the factual and legal basis for this allegation, identify all facts supporting this allegation, and produce all documents supporting this allegation.

Response: Late paying customers will compensate BellSouth twice under the proposed tariff. First the compensate Bell through the working capital needs, etc. built into the rates. Then they will compensate Bell again through the proposed charge.

18. Does the CAD contend that BellSouth receives compensation for late payments through any existing rate(s)? If so, please identify each and every specific rate through which you contend BellSouth receives such compensation, explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. The whole of the rates for services listed in BellSouth's approved Tennessee Intrastate tariffs on file with the Tennessee Regulatory Authority. When the Tennessee Public Service Commission approved the rates that eventually became BellSouth's initial rates under its price regulation plan, the working capital required to finance the operations of the utility from the time service is provided until the time that revenues are collected was included as a component of the rate

base. The time lag used was based on a BellSouth lead lag study of the Company's billing and collection experience and included the lag between the date service was provided and the time of collection from those customers who paid late as well as those customers who paid on time. The rates also were set at the level to allow BellSouth to recover its reasonable operating experience which includes collection costs related to those who pay late, since billing and collections are considered a normal part of any business operations.

The approved tariffs, the working capital study submitted by BellSouth, and BellSouth's forecast of operating costs that formed the basis for the Public Service Commission's decision are in BellSouth's possession. This response incorporates the responses to other discovery requests by reference. BellSouth has not shown that compensation under current rates to be unjust.

19. Please admit that BellSouth is operating pursuant to an approved price regulation plan.

Response: Denied. There is no articulable plan. The Consumer Advocate Division contends that the "plan" is ultra vires, unlawful and voidable. The Consumer Advocate Division admits that the Tennessee Regulatory Authority through a December 9, 1998 Order purports to have approved BellSouth's application retroactively to 1995 in contravention of the 1995 Tennessee Public Acts, chapter 305 and Tenn. Admin. Rule 1220-4-2-.55(1)(e).

20. The Complaint filed by the CAD alleges that approving BellSouth's tariff would be contrary to Tenn. Code Ann. § 65-4-123 which provides that "the regulation of telecommunications services and telecommunications services providers shall protect the interest of consumers without unreasonable prejudice or disadvantage to any telecommunications service provider. . . See Complaint ¶ 33. Please explain in detail the factual and legal basis for this allegation, identify all facts supporting this allegation, and produce all documents supporting this allegation.

Response: BellSouth intends to subsidize its particular business service revenues by adding additional charges to residential and small business basic local exchange service due to its near monopoly position in the market place. Since it is already earning a 30% return on equity on its Tennessee operations and there is no evidence that any other company's basic local exchange service for Tennessee operations in BellSouth's service area achieves a similar return, BellSouth is using its monopoly power to harm competitors. The company has not shown any unreasonable prejudice or disadvantage and is in fact achieving a record rate of return on its investment used to provide service in Tennessee.

21. Please identify in detail the legal authority (including but not limited to statutes, rules,



regulations, and case law) the CAD contends governs the extent to which the following entities may impose a late payment charge: (a) BellSouth; (b) any other incumbent local exchange telephone company operating under price regulation; (c) an incumbent local exchange telephone company not operating under price regulation; and (d) a competing telecommunications service provider.

Response: The Consumer Advocate Division objects to this discovery request as unduly burdensome, irrelevant and as an impingement on the Attorney General's investigatory and prosecutorial powers and work product. Without waiving this objection, the Consumer Advocate Division submits that the General Assembly specifically set the policy for companies applying for price regulation in the 1995 Public Acts, chapter 408. BellSouth has the legislative history in its possession. BellSouth voluntarily brought itself within that policy group.

22. Please admit that Tenn. Code Ann. § 65-4-123 requires among other things that regulation shall not unreasonably prejudice or disadvantage any telecommunications services provider.

Response: Tenn. Code Ann. § 65-4-123 requires what it requires. Moreover, denying the proposed tariff does not unreasonably prejudice and disadvantage BellSouth.

23. What is the legal standard the CAD contends is applicable in determining whether a late payment charge imposed by each of the following entities is just and reasonable: (a) BellSouth; (b) any other incumbent local exchange telephone company operating under price regulation; (c) an incumbent local exchange telephone company not operating under price regulation; and (d) a competing telecommunications service provider. Please set forth in detail the factual and legal basis for each response, identify all facts supporting each response, and produce all documents supporting each response.

Response: The Consumer Advocate Division objects to this discovery request as unduly burdensome, irrelevant and as an impingement on the Attorney General's investigatory and prosecutorial powers and work product. Without waiving this objection, the Consumer Advocate Division submits that the General Assembly specifically set the policy for companies applying for price regulation in the 1995 Public Acts, chapter 408. BellSouth has the legislative history in its possession. BellSouth voluntarily brought itself within that policy group.

24. Please admit BellSouth's cost of an unbundled loop is more than \$12.15 per month.

Response: Denied. The determination of the cost of BellSouth's unbundled loop is the subject of a pending docket before the Tennessee Regulatory Authority. In addition the cost of an unbundled loop in isolation has little meaning without consideration of the revenues billed to customers who utilize such a loop. For

example, a customer in a Rate Group 5 exchange who purchases Flat Rate Residential Service is billed \$3.50 as a Subscriber Line Charge, a \$1.25 for TouchTone charge, \$12.15 as a local exchange service charge, and the presubscribed long distance carrier is billed a \$1.04 Prescribed Interexchange Carrier Charge (PICC), a total of \$17.94 before revenues from long distance service, usage sensitive access charges, or any vertical services such as Call Waiting or Call Forward are considered. To illustrate, for the twelve months ended November 1999 the average local service revenue per line per month was \$33.97 per month<sup>1</sup> (\$1,099,411,000/2,696,758/12=\$33.97 TRA 3.01 Report November 1999). BellSouth's reported intrastate profit (net income) for the same period was an average of \$7.43 per line per month even with BellSouth's excessive depreciation rates. From this it is apparent that BellSouth is recovering well in excess of the cost service, including cost resulting from late payments, from its Tennessee ratepayers.

[<sup>1</sup> The total (local, long distance, & miscellaneous service) average intrastate revenue per line was \$39.95 per month (\$1,292,737,000/2,696,758/12) and the total average combined interstate and intrastate revenue per month \$53.55 (\$1,732,990,000/2,696,758/12) while the combined average profit per month was \$9.82 (\$318,034,000/2,696,758/12). The revenues and line count are as reported by BellSouth on its November 1999 monthly report to the TRA.]

25. Does the CAD contend that BellSouth's cost of an unbundled loop is more than \$12.15 per month? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: The Consumer Advocate Division can neither admit nor deny. The Consumer Advocate Division objects to the remainder of this interrogatory as unduly burdensome and is irrelevant.

26. BellSouth's Answer to the CAD's Complaint identifies several CLEC tariffs which provide for late payment charges. See Answer at 2 n.1. For each company identified in that document, please state whether the CAD has attempted to investigate whether that company's late payment charge is just and reasonable or otherwise appropriate.

Response: The Consumer Advocate Division objects to this interrogatory and asserts its and the Attorney General's investigative and prosecutorial privilege and Tenn. Code Ann. § 10-7-504 (a)(5).

27. If the CAD has attempted any investigation described in Item No. 29, please describe the investigation with specificity and produce all documents related to or arising out of such investigation.

Response: The Consumer Advocate Division objects to this interrogatory and asserts its and the Attorney General's investigative and prosecutorial privilege and Tenn. Code Ann. § 10-7-504 (a)(5).

28. If the CAD has not attempted any investigation described in Item No. 29, please explain in detail the reasons the CAD has not done so.

Response: The Consumer Advocate Division objects to this interrogatory. See objections above.

29. Please produce any and all information received or considered by the CAD from any public or private entity in the southeastern United States concerning credit granting policies that are allegedly "comparable" to those of BellSouth.

Response: Consumer Advocate Division will update this discovery response as necessary.

30. Is the CAD aware of any consumer complaints regarding BellSouth's proposed late payment charge? If so, please identify in detail the nature of each such complaint and the persons or entity who registered such complaints, and please produce all documents related to or arising out of such complaints.

Response: The Consumer Advocate Division objects to the relevancy of this interrogatory. By law BellSouth is not currently allowed to impose the late payment charge therefore complaints are not likely. Without waiving its objections, one or more persons may have inquired about or complained about the proposed tariff or a prior proposed tariff. All complaints are public documents at the TRA or if relevant the Division of Consumer Affairs. The Consumer Advocate Division objects to work product and invasions of Tenn. Code Ann. § 10-7-504 (a)(5) privileges.

31. Does the CAD contend that BellSouth provides annual discounts to customers who pay for local service in advance? If so, please set forth in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. For some of its privileged business customers, BellSouth provides annual discounts through special contracts. Nearly all of BellSouth customers are also billed in advance of BellSouth providing local service.

32. Please identify each and every person who provides answers to or otherwise participates

in responding to each of these Data Requests.

Response: Archie Hickerson, Robert T. Buckner, Michael Chrysler, BellSouth, L. Vincent Williams.

33. Please produce any and all criticism(s) and comments of any and all studies of customer payment patterns in the CAD's possession or of which the CAD has knowledge.

Response:

34. Please admit that there is statutory authority for the Tennessee Regulatory Authority to approve a BellSouth tariff imposing a charge for late payments.

Response: Denied with respect to the tariff at issue.

35. Does the CAD contend that the fact that BellSouth did not seek any rate adjustments during the proceedings addressing its application for price regulation estops BellSouth from implementing its proposed late payment tariff? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. Prior to filing its application, BellSouth knew or should have known that its discretion regarding basic local exchange service rates and charges would be limited under Tenn. Code Ann. § 65-5-208 (a). It was therefore placed on notice by the words of the statute. During the Tenn. Code Ann. § 65-5-209 proceeding BellSouth knew or should have known that its rates at the time its application would be approved could be deemed just and reasonable as a matter of law and shall be maintained and that deviations from those rates could be unreasonable or exceed the maximum. BellSouth knew or should have known that cross-subsidies or tying residential and business basic rates to non-basic business rate decreases would be prohibited. BellSouth knew or should have known that its revenues will be considered under Tenn. Code Ann. § 65-5-207 and that basic local exchange service rates need not increase for any reason. BellSouth knew or should have known that preferences to its competitive services will be prohibited under Tenn. Code Ann. § 65-5-208 (c).

36. Please admit that BellSouth incurs costs in attempting to collect late payments.

Response: Denied. See the answer to number 13.

37. Does the CAD contend that BellSouth's late payment charge is unjustly, unreasonably, or unduly preferential or discriminatory? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. See response to No. 31.

38. With reference to Issue No. 2 as set forth in BellSouth's March 22, 2000 letter to Mr. David Waddell, does the CAD contend that BellSouth's billing agreements with other telecommunications companies do not allow BellSouth to charge its proposed late payment charge to the consumer, in the event a consumer pays the bill late? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. Consumers are not BellSouth's actual customers under the billing agreements with other companies. The other company is BellSouth's customer. Any late payments must arise if at all, as payments to those companies the consumer contracted with to pay that company's late charge.

39. With reference to Issue No. 2 as set forth in BellSouth's March 22, 2000 letter to Mr. David Waddell, does the CAD contend that BellSouth's billing agreement with other telecommunications companies prohibit BellSouth from charging its proposed late payment charge to the consumer, in the event a consumer pays the bill late? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Response: Yes. See response above.

Respectfully submitted,



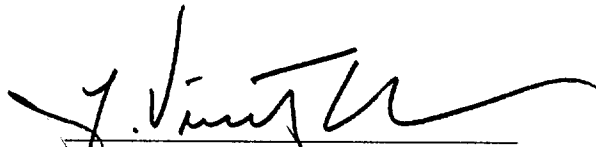
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BPR. No. 011189

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Response has been mailed postage prepaid to the parties listed below this 6<sup>th</sup> day of April, 2000.

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